

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

LORI O'HERN,)	
)	
Plaintiff,)	
)	
vs.)	No.
)	FILED: AUGUST 28, 2008
JOHN M. LAYTON, JR. and)	08CV4934
THUREL MASON TRUCKING, INC.)	JUDGE DOW
)	MAGISTRATE JUDGE MASON
Defendants.)	NF

NOTICE OF REMOVAL

NOW COME the defendants, JOHN M. LAYTON, JR. and THUREL MASON TRUCKING, INC., by and through their attorneys, CHILTON YAMBERT & PORTER LLP, pursuant to Title 28 U.S.C. §§ 1332, 1441 and 1446, hereby file their Notice of Removal of the cause entitled *Lori O'Hern v. John M. Layton and Thurel Mason Trucking, Inc.*, filed in the Municipal Department of the Sixth District of the Circuit Court of Cook County, Illinois under case number 2008 M6 003269.

As their grounds for removal, defendants state as follows:

1. That plaintiff commenced an action against the above-referenced defendants on or about July 23, 2008 by filing plaintiff's Complaint at Law in the Municipal Department of the Sixth District of the Circuit Court of Cook County, Illinois under case number 2008 M6 003269. A true and correct copy of the Complaint and Summons is attached hereto and made a part of this Notice as Exhibit "A".

2. That the defendant, John M. Layton, Jr., is a citizen of the State of Utah and was a citizen of Utah at the time of the alleged incident. That Thurel Mason Trucking, Inc. is a citizen of the State of Utah. That Thurel Mason Trucking, Inc. has its

principal place of business at 1420 South 400 West, Aurora, Utah 84620. See Affidavit of John M. Layton, Jr., attached as Exhibit "B" and Affidavit of Lane Ogden of Thurel Mason Trucking, Inc., attached hereto as Exhibit "C".

3. That attached hereto as Exhibit "A" is the Complaint filed in the Circuit Court of Cook County, Illinois, Court No. 2008 M6 003269 entitled *Lori O'Hern v. John M. Layton and Thurel Mason Trucking, Inc.*

4. That based on information and belief, Plaintiff, Lori O'Hern is a citizen of the State of Illinois.

5. That the State Court action is an action for civil damages by Lori O'Hern for personal injuries. No specific dollar amount for damages is alleged on the face of the Complaint, but the amount in controversy is believed to exceed \$75,000, exclusive of interest and costs. Defendants hold this reasonable belief based on the allegations of the Complaint, which requests an unspecified amount in excess of \$50,000, and makes the following allegations regarding Lori O'Hern's injuries:

- a) She sustained "severe and permanent injuries", both externally and internally;
- b) The function and use of her body parts and organs were seriously diminished;
- c) She "suffered great pain and anguish both in mind and in body and will, in the future, continue to suffer";
- d) She will "permanently be hindered and prevented from attending to her usual duties and affairs";
- e) She has lost and will lose "large sums of money which would otherwise have accrued to her"; and
- f) She was "compelled to expend and become liable for large sums of money for hospital and medical services, nursing care and attention";

6. 28 U.S.C. § 1332 provides that:

- (a) The District Court shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, and is between
 - (1) citizens of different states;
 - (2) citizens of a State and citizens or subjects of a foreign state . . .

7. Accordingly, this action is removable under 28 U.S.C. §1441, which provides:

- (a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

WHEREFORE, defendants, JOHN M. LAYTON and THUREL MASON TRUCKING, INC., file their Notice of Removal, removing the State Court action from the Circuit Court of Cook County, Illinois, to the United States District Court, Northern District of Illinois.

s/ Steven M. Canty
CHILTON YAMBERT & PORTER LLP
Attorney for Defendants

Steven M. Canty
CHILTON YAMBERT & PORTER LLP
325 Washington Street, S-200
Waukegan, IL 60085
847/625-8200
847/625-8262 – Fax

tabbics®

EXHIBIT

9 11

4

4. That at said time and place there was a vehicle being operated and propelled southbound on Wood Street by Willie Jordan that was to the left and slightly in front of the vehicle being operated by Plaintiff LORI O'HERN.

5. That at said time and place the Defendant, JOHN M. LAYTON, had a duty to operate his vehicle with due care and caution, and to be sufficiently in control of his own vehicle so as to be able to stop it without running into other traffic lawfully on the roadway.

6. That at said time and place, the Defendant, JOHN M. LAYTON, agent for the Defendant, THUREL MASON TRUCKING, INC., a corporation, negligently operated and propelled his vehicle so that, as a direct and proximate result thereof, it forcibly and violently collided with vehicle being operated by Willie Jordan, forcing that vehicle to violently strike Plaintiff's automobile. As a result of the crash, Defendant, JOHN M. LAYTON's tractor-trailer also struck Plaintiff's vehicle.

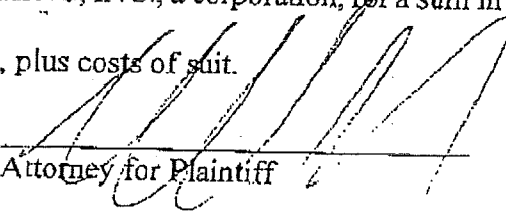
7. That then and there, the Defendant, JOHN M. LAYTON, agent for the Defendant, THUREL MASON TRUCKING, INC., a corporation, was guilty of one or more of the negligent acts or omissions:

- (a) The Defendant failed to stop when danger was imminent.
- (b) The Defendant failed to give a warning.
- (c) The Defendant operated and propelled his vehicle at a speed which was excessive and unreasonable.
- (d) The Defendant failed to yield the right-of-way.
- (e) The Defendant failed to stop his vehicle at a steady red traffic-control signal.
- (f) The Defendant failed to use due care and caution and failed to keep a proper look-out.

87.625.8262

8. That by reason of the premises as a direct and proximate result thereof, the Plaintiff, LORI O'HERN then and there sustained severe and permanent injuries, both externally and internally, and she was thereby greatly hurt, bruised and wounded; the neck, back, spine, arms, legs, body, head and the bones, joints, muscles, tendons, nerves, membranes, ligaments and vessels thereof were seriously contused, bruised, sprained, wrenched and weakened; she suffered nausea, vertigo, and sleeplessness; the function and use of all the aforesaid parts and organs were seriously diminished, impaired and made painful; and she became therefrom sick, sore, lame and disordered and so remained for a long period of time, to wit; from thence to hereto, during all of which time she suffered great pain and anguish both in mind and in body and will, in the future, continue to suffer, and she was by reason of said injuries hindered and prevented, and permanently will be hindered and prevented from attending to her usual duties and affairs, and she has thereby lost and will in the future, thereby lose large sums of money which would otherwise have accrued to her, and she was compelled to expend and become liable for large sums of money for hospital and medical services, nursing care and attention in and about endeavoring to become healed and cured of her injuries, all to her damage in a sum in excess of Fifty Thousand and 00/100 (\$50,000.00) Dollars, plus costs of suit.

WHEREFORE, the Plaintiff, LORI O'HERN, prays judgement against the Defendants, JOHN M. LAYTON and THUREL MASON TRUCKING, INC., a corporation, for a sum in excess of Fifty Thousand and 00/100 (\$50,000.00) Dollars, plus costs of suit.


Attorney for Plaintiff

LAW OFFICES OF BOZICH & KORN
11800 South 75th Avenue
Palos Heights, Illinois 60463
(708) 923-6000
Attorney Code No. 23579

SERVICE LIST

Lori O'Hern v. John M. Layton and Thurel Mason Trucking, Inc.

John M. Layton
1180 South Cove View Road - #14
Richfield, Utah 84701

Thurel A. Mason, Registered Agent for
THUREL MASON TRUCKING, INC.
1420 South 400 West
Aurora, Utah 84620

4/2008 18:57 FAX 435 529 7007

THUREL MASON TRUCKING

- Alias Served 2121 - Alias Not Served 2621 - Alias Sec. of State

s form replaces CCM 0646, CCM1 0646, CCM1 0651, CCM1 0648, and CCM1 0649-2 thru 6)

(Rev. 9/26/01) CCM 0649 A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, SIXTH DISTRICT

C 17773

Name All Parties

LORI O'HERN

Plaintiff(s)

v.

JOHN M. LAYTON and THUREL MASON
TRUCKING, INC.

Defendant(s)

Person Served Debbie Poulson
Address 1420 So 400w. Aurora
Date 07-30-08 Time 11:32
Deputy Lin Brudgman
Senior County Sheriff's Office

To each defendant:

YOU ARE SUMMONED and required:

1. To file your written appearance by yourself or your attorney and pay the required fee in:

[] District 1: Richard J. Daley Center, Rm. 602, Chicago, IL 60602

[] District 3: 2121 Euclid, Rolling Meadows, IL 60008

[] District 5: 10220 S. 76th Ave., Bridgeview, IL 60455

[] District 2: 5600 Old Orchard Rd., Skokie, IL 60077

[] District 4: 1500 Maybrook Dr., Maywood, IL 60153

[X] District 6: 16501 S. Kedzie Pkwy., Markham, IL 60426

on August 18, 2008 before 9:00 A.M. on that date.

2. File your answer to the complaint before 9:00 A.M. as required by the applicable subsections of Paragraph 3 or 4 in the NOTICE TO THE DEFENDANT on the reverse side.

IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF ASKED IN THE COMPLAINT, A COPY OF WHICH IS HERETO ATTACHED.

To the officer:

This summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service, and not less than 3 days before the day for appearance. If service cannot be made, this summons shall be returned so endorsed.

This summons may not be served later than 3 days before the day of appearance.

Appearance Fee:

If claim is:

\$1500 or Less \$70.00 Over \$1500 \$90.00

Over \$15,000 \$105.00

WITNESS, _____

Dorothy Brown, Circuit Court Clerk

City No.: 23579

Name: Law Offices of Bozich & Korn

City for: Plaintiff

Address: 11800 S. 75th Avenue

City/State/Zip: Palos Heights, Illinois 60463

Telephone: (708) 923-6000

Service by Facsimile Transmission will be accepted at:

(Area Code)

(Facsimile Telephone Number)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

No. 08M6-269Amount Claimed \$ 50,000.00 In excess ofReturn Date August 18, 2008Status Date 8-25-08

Trial Date _____

Time 9:00 Room 207

PLEASE SERVE:

See attached Service List

SEE REVERSE SIDE

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, SIXTH DISTRICT

LORI O'HERN,

Plaintiff,

vs.

JOHN M. LAYTON and
THUREL MASON TRUCKING, INC.

Defendants.

No. 08 M6 003269

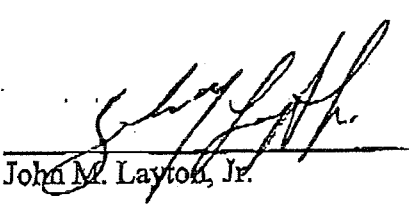
AFFIDAVIT

I, John M. Layton, Jr. am an adult of sound mind and body being duly sworn on oath, state that if called to testify I would do so with personal knowledge as follows:

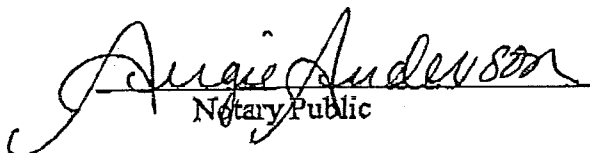
1. My name is John M. Layton, Jr.
2. I am a named defendant in the above-captioned matter.
3. I reside at 96 S. 200 West, Richfield, Utah 84701.
4. That all times relevant to the above-captioned matter, I have resided in the State of Utah.

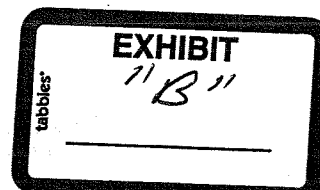
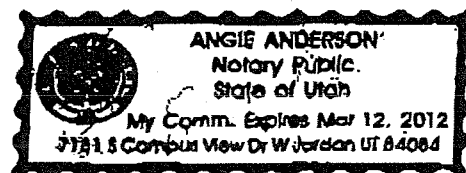
Further affiant sayeth not.

Dated: August 22, 2008


John M. Layton, Jr.

Subscribed and Sworn to before
me this 22 day of August 2008.


Notary Public



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, SIXTH DISTRICT

LORI O'HERN,

Plaintiff,

vs.

JOHN M. LAYTON and
THUREL MASON TRUCKING, INC.

Defendants.

No. 08 M6 003269

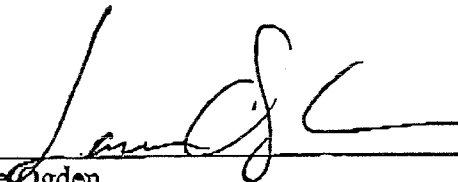
AFFIDAVIT

I, Lane Ogden, am an adult of sound mind and body, being duly sworn on oath, state that if called to testify I would do so with personal knowledge as follows:

1. My name is Lane Ogden.
2. I am the Safety Director of Thurel Mason Trucking, Inc., a Utah for profit corporation.
3. That Thurel Mason Trucking, Inc.'s corporate office is at 1420 South 400 West, Aurora, Utah 84620.
4. That at all times relevant, Thurel Mason Trucking, Inc. has been a Utah corporation.

Further affiant sayeth not.

Dated: August 22, 2008


Lane Ogden

Subscribed and Sworn to before
me this 22 day of August, 2008.


Notary Public

